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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 728

RUBY JEAN GRANNIS AND THE BRANCH BANKING AND TRUST COMPANY, FAYETTEVILLE, NORTH CAROLINA, ADMINISTRATORS OF THE ESTATE OF EDWARD W. GRANNIS, DECEASED, KARL SLOAN AND WILLIAM R. JONES,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. 726

RUBY JEAN GRANNIS AND THE BRANCH BANKING AND TRUST COMPANY, FAYETTEVILLE, NORTH CAROLINA, ADMINISTRATORS OF THE ESTATE OF EDWARD W. GRANNIS, DECEASED, KARL SLOAN AND WILLIAM R. JONES,

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UNITED STATES OF AMERICA,

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF

I

The respondent has argued in its brief in opposition to the petition for writ of certiorari filed by the petitioners in this case that no question for certiorari has been presented because as a factual matter there is no foundation in the record for the asserted denial of the right to a jury trial (Br. 15). The respondent argues that the case was tried in the trial court, both on the theory of individual fraudulent acts and a conspiracy to defraud the United States (Br. 16). With respect to these petitioners' contention that the

case was tried on the issue of conspiracy only, it is stated by the respondent that the only supporting reference cited by petitioners relates to the statement made by Government counsel in connection with the admissibility of evidence (Br. 16). In this respect the respondent completely overlooks the fact that at the time this statement was made the trial court reiterated the Government's theory that the case was limited to a conspiracy charge only, and there was no objection on the part of Government counsel to the court's characterization of the case at that time, (R. 67; Tr. 67).

Although the complaint set forth the charges of both individual and conspiracy violations (R. 5) and the Government attempted to have the charges of violations in both respects submitted to the jury (R. 16-17), it is still apparent from the evidence submitted by the Government that the only possible charge which could be supported would be the conspiracy charge. There could be falsity in the claims only in the event Jones was not the owner of the property involved and false claims showing him to be the owner could only result from a conspiracy.

It is evident that the respondent is laboring under a patent misunderstanding of the case at bar in that it apparently believes that if the defendant Jones was the actual owner of the equipment involved in this case, either a conspiracy charge or individual fraudulant actions could be supported (Br. 18). This misunderstanding arises from a misconception of third party rental agreements which permitted a third party renter to use a higher valuation than actual cost to him in determining the amount upon which rentals and recapture were to be based. The Court of Appeals for the Fourth Circuit clearly recognized the government practice of permitting valuation of third party rental equipment in excess of actual cost (R. 101-102). The respondent in its brief at page 18 states as follows:

> "But even if reasonable men could find that Jones was the actual owner of the equipment the result would be

> the same. Although this might raise some question of the effect of Grannis' obligations to obtain all available discounts and rebates for the Government and to act at all times to best serve the Government's interest, it would not change the character of the misrepresentations of the actual cost and value of the equipment upon which the false claims were made and paid."

The respondent is apparently unaware of the record if it contends that the defendant Jones was required to value his property, put upon third party rentals, at actual cost to him. This is contrary to a letter of instruction issued by the office of Quartermaster General (R. 47-49). Under the Jones rental agreement the valuation placed thereon by the third party renter was to be deemed final unless within ten days after the equipment had been set up and was operating, the lessee or contracting officer or his duly authorized representative modified such valuation (R. 64). The testimony of a government witness showed that the valuation of such equipment was not questioned by the Government, but in fact approved. (R. 72-75). This same government witness further testified that a third party renter was en titled to put full replacement price, or full retail price, as the proper valuation, and was not limited to actual cost (R. 75). It was further clear from the testimony of government witnesses that the prices charged Jones and paid for the automobiles in question were less than retail prices (Tr. 195, 220, 229).

The respondent in its brief characterizes this case as one in which the evidence leaves no room whatever for honest differences of opinion (Br. 18) and quotes from the dissenting opinion in *Galloway v. United States,* 319 U. S. 372, at 407. This same dissenting opinion contains the following language at 406-407:

> "The language of the Seventh Amendment cannot easily be improved by formulas. The statement of a dis-

trict judge in Tarter v. United States (DC) 17 F Supp 691, 692, represents, in my opinion, the minimum meaning of the Seventh Amendment:

" 'The Seventh Amendment to the Constitution guarantees a jury trial in law cases, where there is substantial evidence to support the claim of the plaintiff in an action. *If a single witness testifies to a fact sustaining the issue between the parties, or if reasoning minds might reach different conclusions from the testimony of a single witness, one of which would substantially support the issue of the contending party, the issue must be left to the jury. Trial by jury is a fundamental guaranty of the rights of the people, and judges should not search the evidence with meticulous care to deprive litigants of jury trials.*' " (Italics supplied)

Nothing could be clearer than this case is one in which reasoning minds might reach different conclusions from the testimony of a set of witnesses presented by a party in a case. The history of this case shows that a learned trial judge honestly believed reasoning minds might reach different conclusions than that urged by the Government in this case upon the testimony of its witnesses. The history of this case bears out the judge's belief since in fact a jury, composed of reasonable men, honestly believed that the Government failed to establish by the greater weight of the evidence that these defendants were guilty of conspiracy to file fraudulent claims with the United States.

Briefly this case presents the sharp question whether the Courts of Appeals was *compelled* to enter judgment for the Government even though the evidence produced by the Government established the following catalog of facts, both favorable and unfavorable to the Government.

Evidence Tending to Support Government Theory	*Evidence Tending to Support Jury Verdict*
1. Banks furnishing funds required a guarantee from Grannis (R. 94).	1. Title to vehicles was registered in Jones in compliance with State law (R. 95).
2. Grannis deposited $20,000 in the Jones bank account used for the purchase of vehicles (R. 94).	2. Jones executed chattel mortgages in favor of the banks furnishing the purchase money to secure the purchase price (R. 94).
3. Grannis, or an associate, negotiated the purchase of vehicles (R. 94-95).	3. Jones executed the notes to the banks as evidence of the loans made for the purchase of vehicles (Tr. 260, 270, 282).
4. Sloan negotiated the bank loans for Jones (R. 94).	4. Jones reported all the income from rentals in his income tax returns (R. 54-55).
5. Sloan controlled the Jones bank account during the duration of the indebtedness for the purchase price of the vehicles (R. 94).	5. Neither Grannis nor Sloan profited by the transaction (R. 55).
6. Fleet discounts for Jones were obtained in the name of Grannis (R. 95).	6. All records of the transaction were either semi-public or preserved and given freely to Government investigators (R. 55-56).

It is obvious that the selection by the court below of the facts favorable to the Government as a basis for its conclusion

constituted an invasion of the province of the jury. The facts favorable to the Government might justify a jury verdict in its favor, but do not compel the findings of the court of appeal. *Upon this state of the evidence for the court below to find beyond all reasonable doubt against these petitioners and therefore be compelled to enter judgment for the Government renders the constitutional guarantee of trial by jury meaningless.*

II

The respondent has argued that no conflict is asserted and that therefore the determination in this case does not warrant review by this court (Br. 19). However, in view of the number of possible litigants who may be interested in the outcome of this case in addition to the parties thereto, it is believed that the fundamental questions of constitutional law and jurisprudence which are involved warrant consideration by this court. Certainly some, if not all, of the possible litigants involved in approximately 969 investigations of violations under the False Claims Statute would like to know whether the decision of the Court of Appeals in this case represents valid law. In the event the determination of the Court of Appeals in the case remains undisturbed, it can stand for the following propositions:

1. The location of title to, or ownership of, personal property may be ignored in a case where the alleged falsity in a proceeding under the False Claims Statute relates to representations as to such title and ownership.

2. Individuals having contracts with United States Government assist *at their peril* relatives by marriage in the obtaining of credit, since such relatives may at a later date receive payments from the United States for equipment leased and if purchased from funds sup-

plied by such relatives, as a matter of law, such circumstances establish liability under the False Claims Statute.

3. Rulings of a trial judge in accordance with State practice, if subject to criticism, although not erroneous, somehow color the evidence in favor of the party producing it, and justify an appellate court in depriving the adverse party of a trial by jury.

4. Even where evidence produced by a party at the trial is favorable to an adverse party, it is not a contravention of the Seventh Amendment to the Constitution of the United States for a reviewing court to disregard the findings of the trial judge and the jury based upon such favorable evidence.

5. The failure of defendants to take the stand or offer testimony in their own behalf in a proceeding under the False Claims Statute prevents submission of the case to the jury.

6. As a matter of law a defendant's failure to take the stand or offer testimony in his own behalf in a proceeding under the False Claims Statute establishes liability.

7. It is unnecessary to show knowledge of the falsity of claims in a proceeding under the False Claims Statute.

If any of the above propositions are legally valid, none of the parties involved in the 969 investigations should risk litigation in their cases. Further, every third party rental voucher filed with the Government should be investigated for a determination of the source of the funds which enabled the owner to purchase such equipment—there may be a brother-in-law involved.

For the reasons stated in the petition, brief and this reply, the petition for writ of certiorari should be granted,

the judgment of the Court of Appeals should be reversed and the judgment of the District Court should be affirmed.

Respectfully submitted
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May 23, 1949

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed three (3) copies of the foregoing reply brief on behalf of petitioners, postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D. C.

This 23rd day of May, 1949.

Claude C. Pierce, Jr.
Of Counsel for Petitioners.